

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE INSTITUTE OF CETACEAN
RESEARCH, a Japanese research
foundation; KYODO SENPAKU
KAISHA, LTD., a Japanese corporation;
TOMOYUKI OGAWA, an individual; and
TOSHIYUKI MIURA, an individual,

Plaintiffs,

v.

SEA SHEPHERD CONSERVATION
SOCIETY, an Oregon nonprofit
corporation, and PAUL WATSON, an
individual,

Defendants.

SEA SHEPHERD CONSERVATION
SOCIETY, an Oregon nonprofit
corporation,

Counterplaintiff,

v.

THE INSTITUTE OF CETACEAN
RESEARCH, a Japanese research
foundation; KYODO SENPAKU
KAISHA, LTD., a Japanese corporation;
and HIROYUKI KOMURA, an individual,

Counterdefendants.

No. C11-2043 RAJ

DECLARATION OF JOHN F. NEUPERT
IN OPPOSITION TO DEFENDANTS'
MOTION FOR PROTECTIVE ORDER

1 I, John F. Neupert, hereby declare as follows:

2 1. I am an attorney with Miller Nash LLP, the attorneys of record for
3 plaintiffs and for counterdefendants The Institute of Cetacean Research and Kyodo Senpaku
4 Kaisha, Ltd., in this case. I make this declaration in opposition to Defendants' Motion for
5 Protective Order Regarding Depositions Scheduled January 28-30, 2013, filed on January 15,
6 2013 (Dkt. No. 120). I am competent to testify to the matters stated herein and either have
7 personal knowledge of the facts set forth below or they are from sources deemed reliable.

8 2. Attached as Exhibit 1 is a copy of Plaintiffs' Notice of Depositions, served
9 on January 9, 2013, giving notice of plaintiffs' intent to take the depositions of various
10 representatives of defendant Sea Shepherd Conservation Society ("SSCS") on January 28, 29,
11 and 30, 2013, in Seattle, Washington. After learning that deponent No. 2 (Kurt Lieber) is no
12 longer with SSCS, I informed defendants' counsel that he was withdrawn from the notice.

13 3. On May 11, 2012, we served Plaintiffs' "Second" Request to Defendants
14 for Production of Documents and Things on defendants. Attached as Exhibit 2 is an excerpted
15 copy of defendants' responses to Plaintiffs' "Second" Request to Defendants for Production of
16 Documents and Things.

17 4. Attached as Exhibit 3 is what used to appear as the front page of the SSCS
18 website at <http://www.seashepherd.org>. The website would display a summary page of various
19 operations of SSCS that would roll one to the other. One of them was what is pictured in
20 Exhibit 3 that describes the ZERO TOLERANCE campaign as comprised of "Four Ships, Four
21 Captains, 120+ Crew, UAV Drones, Helicopter, Small Boats, New Tactics, Thousands of
22 Supporters." It appears that the website has been changed to remove Exhibit 3 and certain other
23 material that links SSCS to the current campaign in the Southern Ocean. This change appears to
24 have been made approximately January 16, 2013, or so because when I visited the website on or
25 about that time, Exhibit 3 no longer appeared on the site. Prior to this change, Exhibit 3 had
26 been on the front page of the SSCS site for months.

1 5. Attached as Exhibit 4 is a copy of a webpage printed from SSCS's website
2 regarding its Board of Directors, which is available online at [http://www.seashepherd.org/who-](http://www.seashepherd.org/who-we-are/board-of-directors.html)
3 [we-are/board-of-directors.html](http://www.seashepherd.org/who-we-are/board-of-directors.html) (last visited Jan. 17, 2013).

4 6. Neither plaintiffs nor defendants have pursued discovery in the district
5 court with much vigor, while the parties awaited a decision from the U.S. Court of Appeals for
6 the Ninth Circuit on plaintiffs' appeal of this Court's order denying plaintiffs' motion for
7 preliminary injunction.

8 7. Because plaintiffs were concerned about potential confrontations in the
9 current season, on December 6, 2012, plaintiffs filed their motion to expedite disposition of
10 appeal in the U.S. Court of Appeals for the Ninth Circuit. Within a matter of an hour or two of
11 defendants filing their opposition to the motion, the Ninth Circuit issued its injunction pending
12 decision of plaintiffs' appeal, which is the Order filed in the Western District of Washington on
13 December 17, 2012, as Docket No. 118.

14 8. On December 31, 2012, the last day for requesting reconsideration of the
15 injunction Order, defendants filed an 18-page Motion for Reconsideration Regarding Injunction
16 Pending Appeal, together with the supporting declaration of Charles P. Moure and exhibits
17 (9th Cir. Dkt. Nos. 32 & 33).

18 9. On January 7, 2013, the U.S. Court of Appeals for the Ninth Circuit issued
19 a one-page Order (9th Cir. Dkt. No. 34) in appeal case number 12-35266, stating only
20 "Sea Shepherd Conservation Society's motion for reconsideration is denied."

21 10. On January 8, 2013, the day after the Ninth Circuit issued its Order
22 denying SSCS's motion for reconsideration, I telephoned Dan Harris, one of defendants' counsel,
23 to discuss scheduling the depositions of SSCS personnel during the week of January 28, 2013. I
24 left a message for him to call me. When he did not call me back, at the end of the day
25 (January 8), I sent him an e-mail, a copy of which is attached to Mr. Moure's declaration as
26 Exhibit A (Dkt. No. 120-3). Not having received a response to my earlier telephone call or my

1 e-mail, near the end of the business day on January 9, 2013, I again attempted to reach
 2 Mr. Harris by telephone. Neither he nor Mr. Moure was available, so after waiting awhile for a
 3 returned call, I issued on January 9, 2013, the notice of deposition attached as Exhibit 1. This
 4 series of events is reflected in the e-mails attached to Mr. Moure's declaration as Exhibits A
 5 and B (Dkt. No. 120-3).

6 11. Attached as Exhibit 5 is a copy of web postings from SSCS's website,
 7 indicating that Marnie Gaede was appointed president of SSCS on or about January 7, when
 8 defendant Paul Watson supposedly "resigned" to simply become an "observer." Mr. Watson also
 9 supposedly resigned as "captain" of the STEVE IRWIN.

10 12. Attached as Exhibit 6 is a transcript of a portion of the audio of
 11 Paul Watson's interview with Anna Tremonti of CBC/Radio-Canada on January 14, 2013, as
 12 posted on the Internet at Anna Maria Tremonti, *The Current: A Plan to Stop an Antarctic Whale*
 13 *Hunt: Paul Watson* (CBC/Radio-Canada broadcast, feature interview, Jan. 14, 2013), available at
 14 [http://www.cbc.ca/thecurrent/episode/2013/01/14/a-plan-to-stop-an-antarctic-whale-hunt-paul-](http://www.cbc.ca/thecurrent/episode/2013/01/14/a-plan-to-stop-an-antarctic-whale-hunt-paul-watson/)
 15 [watson/](http://www.cbc.ca/thecurrent/episode/2013/01/14/a-plan-to-stop-an-antarctic-whale-hunt-paul-watson/), at approximately 3:42-5:17 (last visited Jan. 17, 2013). The excerpted transcript was
 16 prepared by my office for the convenience of the Court and parties.

17 13. Attached as Exhibit 7 is a copy of a witness statement of Paul Watson
 18 dated April 12, 2012, in the proceeding between *Fish & Fish Limited and (1) Sea Shepherd UK;*
 19 *(2) Sea Shepherd Conservation Society; (3) Paul Watson*, Claim No. 2011 461, in the High Court
 20 of Justice, Queen's Bench Division, Admiralty Court, United Kingdom.

21 14. Attached as Exhibit 8 is a copy of the Sea Shepherd Volunteer Crew
 22 Application as obtained from SSCS's website at [http://www.seashepherd.org/documents/get-](http://www.seashepherd.org/documents/get-involved/crew_application_01.pdf)
 23 [involved/crew_application_01.pdf](http://www.seashepherd.org/documents/get-involved/crew_application_01.pdf) (last visited Jan. 22, 2013). On page 1 of the application
 24 form, under "Volunteer Crewmember Application Qualifications," it states that applicants "must
 25 be a Sea Shepherd member" to be eligible.
 26

15. In his declaration in support of defendants' motion for protective order, Mr. Moure does not state when he is traveling to Florida or how that impacts the depositions. Insofar as I am aware, the only witness from California who must travel to be deposed is SSCS's new president, Marnie Gaede.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 22nd day of January, 2013, in Portland, Oregon.

s/ John Neupert
John F. Neupert

DECLARATION OF JOHN F. NEUPERT IN OPPOSITION
TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER - 5
(C11-2043 RAJ)

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1 I hereby certify that on January 22, 2013, I electronically filed the foregoing
2 Declaration of John F. Neupert in Opposition to Defendants' Motion for Protective Order with
3 the Clerk of the Court using the CM/ECF system, which will send notification of such filing to
4 the following:

5 Daniel P. Harris
6 dan@harrismoure.com
7 Charles P. Moure
8 charles@harrismoure.com
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Attorneys for Defendants and Counterplaintiff

12 DATED this 22nd day of January, 2013.

13
14 By: s/ John Neupert
15 John F. Neupert, P.C. #39883
16 *Of Attorneys for Plaintiffs and Counterdefendants*
17 *The Institute of Cetacean Research and Kyodo*
18 *Senpaku Kaisha, Ltd.*
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